IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2918 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIVABHAI TABABHAI RATHOD SARPANCH, SAYLA GRAM PANCHAYAT

Versus

STATE OF GUJARAT, ADDITIONAL DEVELOPMENT COMMISSIONER

Appearance:

MR PRADEEP PATEL for Petitioner

AJ DESAI, ld. AGP for Respondent No. 1

MR JM BAROT for MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/05/2000

ORAL JUDGEMENT

The petitioner was working as elected Sarpanch. He was subjected to a show cause notice in September 1999 under Sec.57(1) of the Gujarat Panchayats Act, 1993 on the allegation that although no work had been done for

Dalwadi Para, he certified that such work had been done and thus the Panchayat was made to part with a sum of Rs.25,300/- even though no work had been done at Dalwadi Para. The petitioner gave a reply dated 6th November 1999 and in short, the petitioner's defence is that the work had in fact been done at Karsan Para and not at Dalwadi Para and the payment was also made against the work done for Karsan Para, but by mistake, instead of writing as Karsan Para, he certified that the work had been done at Dalwadi Para. The submission of the petitioner is that it is a bonafide mistake of mentioning Dalwadi Para instead of Karsan Para and in fact there is no misconduct. The payment has in fact been made for Karsan Para. However, the Dist. Development Officer passed an order dated 29th February 2000 removing the petitioner from the office of the Sarpanch.

2. There is no dispute that against this order dated 29th February 2000 passed by the Dist. Development Officer, Surendranagar, the petitioner's appeal under Sec.57(3) is pending before the Addl. Development Commissioner. During the pendency of the appeal, the petitioner has come before this Court against the order dated 24th/28th March 2000 passed by the Addl. Development Commissioner rejecting his prayer with regard to the stay of the order passed by the Dist. Development Officer.

3. In the facts and circumstances of this case, since the appeal is pending before the Addl. Development Commissioner, it will not be proper to express any opinion on the merits of the case at this stage since it may prejudice the case of the either side. The ends of justice would be met if the Addl. Development Commissioner is directed to decide the petitioner's pending appeal at the earliest possible date but not later than a period of 15 (fifteen) days from the date the certified copy of this order is produced before the appellate authority, since the petitioner has submitted that his term as elected Sarpanch is going to expire on 1st June 2000. Ordered accordingly. It will be open for the petitioner to raise all legal grounds before the appellate authority including the ground that no notice under Sec.57(1) had been given to the Panchayat and such notice was given only to the petitioner as Sarpanch. This Special Civil Application is hereby dismissed with the observations as aforesaid. Rule is hereby discharged. No order as to costs. Direct service is permitted.

(M.R. Calla, J.)

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